

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-792

November 24, 1998

BELL ATLANTIC-MAINE
Appeal of Consumer Assistance
Division Decision #1997-4414
Regarding St. Joseph's College

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we find that Bell Atlantic's current schedules do not allow it to charge St. Joseph's College for the undepreciated value of poles and cable if St. Joseph's chooses to remove this aerial equipment.

II. BACKGROUND

On April 29, 1997, St. Joseph's College filed a complaint with the Consumer Assistance Division (CAD) about certain charges being assessed on it by Bell Atlantic (BA or the Company). In 1995, St. Joseph's moved its aerial facilities for telephone service underground. In July 1995, Bell Atlantic sent St. Joseph's a construction contract that included charges for the undepreciated value of the poles and cable to be removed as a result of placing service underground. According to BA, this totals \$34,322 (\$9,660 for premature retirement of poles; \$35,792 for premature retirement of cable, less a salvage credit of \$11,130).

St. Joseph's claims that Bell Atlantic never informed it of such charges in discussions that began in the fall of 1994 and that a "penalty" for premature removal of poles and cable is unreasonable. St. Joseph's has paid all expenses for trenching, laying conduit, pulling cable, and terminating cable. It does not dispute paying BA for the labor costs associated with removing the poles. During the course of this dispute, St. Joseph's has left the poles and cables in place to avoid the charges for the undepreciated value, although for all practical purposes its service has been provided through underground cable since 1996.¹

¹BA claims that St. Joseph's is still using the aerial

On October 1, 1998, CAD issued its decision finding that St. Joseph's is not required to pay the depreciation charges because BA does not have authority under tariff, contract or Commission rule to assess such a charge for undepreciated value of poles and attached facilities no longer in use.

On October 8, 1998, Bell Atlantic appealed CAD's decision to the Commission. BA states that when the college first asked BA about the possibility of taking down the aerial plant, the college was correctly notified that special construction charges based on cost would apply and these would include the undepreciated cost of existing used and useful aerial plant.

Bell Atlantic argues that the Special Condition section 2.1.5.B. of its schedules allows it to assess such a charge. This section provides:

- B. If a special assembly or a special installation involving special construction is made on behalf of the customer, or if the cost involved is disproportionately large in comparison with the estimated revenue, charges based on cost apply, in addition to Service charges. If there is considerable cost involved for design and installation, service is furnished subject to a minimum revenue guarantee for at least 12 months service. If a special installation request is cancelled, a processing fee may apply for the expense incurred in engineering the service arrangement.

P.U.C. ME. - No. 15, Part A § 2.1.5.B. Specifically, BA points to the provision "If a special assembly or a special installation involving special construction is made on behalf of the customer . . . charges based on cost apply." (emphasis by Bell Atlantic). Bell claims its costs include undepreciated value of equipment removed.

equipment for service. St. Joseph's responds only that five numbers and four payphones remain on this line and it plans to redirect these underground. May 6, 1998 letter to CAD from St. Joseph's College.

BA claims in numerous instances it has applied this schedule provision to customers choosing to place facilities underground. According to BA, any other treatment would result in other Maine customers, assuming the cost of such optional undergrounding.

III. DISCUSSION

A major problem in this case is the lack of clarity in Bell Atlantic's schedules. We do not disagree that if a customer desires special facilities or construction beyond that which is normally provided, the customer should pay for those extra costs. However, it is difficult to discern from Bell Atlantic's schedules what charges a customer would be subject to if it chose to replace or remove equipment before the expiration of its useful life.

This problem is evident in the varying information provided to St. Joseph's and the Commission in this case. For example, in April 1997 letter, a BA engineer informed St. Joseph's that:

The Maine rules and regulations for this type of request is outlined in P.U.C. Me. No. 15, section 2.1.3.b which states the following: "The customer assumes the expense of maintenance and replacements made necessary by any act of the customer or his representative or by circumstances over which the customer has control."

However, this section appears to be inapplicable for two reasons. First this tariff applies to private property construction. Bell Atlantic never treated St. Joseph's installation as a private property installation (see discussion in following paragraph). Second, it clearly applies to maintenance and replacements and does not address removals.

In subsequent correspondence to CAD in April 1998, a Bell Atlantic representative claimed that if BA had known when it made the initial installation in 1990 that the installation would be "temporary" in nature, Part § A 2.1.5 would have allowed it to bill St. Joseph's for the entire cost of the installation at that time. Yet there is no indication that Bell ever asked about, or gave consideration to, the expected life of the original line or that St. Joseph's or BA ever considered the line to be anything but permanent at the time it was installed. Because the line

would serve individual students living on campus, BA decided it would treat the extension as one serving multiple customers on private property. Such construction on private property used in common for more than one customer is furnished as ordinary highway construction, pursuant to P.U.C. No. 15, Part A § 2.1.1.A.1. Under highway construction, the customer pays no special construction charges at the time of initial installation for highway construction of a normal type. Id. § 2.1.2

We note that other utilities have on file schedules that describe when and how customers will be charged for equipment removed at the customers' option before the end of its useful life. For example, CMP's street lighting rate schedules clearly explain that when a customer requests discontinuation of certain street lighting equipment before the end of its useful 15-year life, the customer must pay any removal costs and the net unrecovered investment, under specific terms set out in the schedule. See, Central Maine Power Company Rate SL, Pages 150.70, 150.80, 150.90.

As described above, BA claims that the Special Condition schedule, § 2.1.5.B. applies to this situation. Even if this section is applicable, an additional issue arises because the schedule is silent on how such a charge would be calculated. This lack of clarity is reflected in the varying information provided the customer. BA initially informed St. Joseph's that the estimated life of a pole is 20 years and "if a pole line is taken out of service (Retired) in less than nine years, Nynex [BA] charges the customer a 'Premature Retirement' amount depending on how premature the retirement actually is." Based on these assumptions, BA estimated premature retirement of pole plant at \$9660, premature retirement of cables at \$35,792 and a salvage credit of \$11,130 for the copper cable. *Letter to St. Joseph College from Verna Chamberlain, BA, May 21, 1997.*

In an April 28, 1998 letter to Verna Chamberlain from Donald Gauvin, Manager-Property and Cost Accounting with BA, Mr. Gauvin reviewed the estimate and found it reasonable. However, he stated that the depreciated life for pole lines is about 33 years in Maine, and that Outside Plant Aerial Cable is 20 years. He further found that BA's engineer used a 9-year life for cable instead of 20 years in the original estimate. According to Mr. Gauvin, this correction would substantially increase the amount for undepreciated life for the poles. BA did not seek to revise the estimate due to this error.

IV. DECISION

The issue now before us is whether BA's Special Conditions schedule supports charging a customer for the undepreciated life of equipment as part of a customer's request for placing cables underground. The Special Condition Schedule allows charges based on costs for a "special assembly," "special installation" or "special construction." Removing or deconstructing does not clearly fall into this provision. Even if we interpreted the terms and condition to apply to this situation, BA's schedules do not explain how such charges would be calculated or when they would apply.

If Bell Atlantic desires to charge customers for the costs of certain equipment before the expiration of its useful life, its schedules should clearly describe the circumstances. The schedule should describe the equipment, when a charge for premature removal will apply and how the charge will be calculated. Because Bell Atlantic's current schedules do not support such a charge, we uphold the Consumer Assistance Division decision that St. Joseph's is not required to pay for the undepreciated value of poles and wires due to their early retirement.

Dated at Augusta, Maine this 24thth day of November, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of

review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.